SUPREME COURT OF THE UNITED STATES.

No. 251.—October Term, 1926.

Cologero Fasulo, Petitioner, *vs.* United States of America.	Certiorari to United States Circuit Court of Appeals for the Ninth Circuit.

[November 29, 1926.]

Mr. Justice Butler delivered the opinion of the Court.

The petitioner, indicted with others in the Northern District of California, was convicted of conspiracy to violate § 215 of the Criminal Code. 35 Stat. 1088, 1130. The judgment was affirmed, 7 F. (2d) 961. And see *Lupipparu* v. *United States*, 5 F. (2d) 504.

The question for decision is whether the use of the mails for the purpose of obtaining money by means of threats of murder or bodily harm is a scheme to defraud within the meaning of that section. Petitioner contends that sending threatening letters for that purpose involves coercion and not fraud. The government insists that in a broad sense threats constitute fraud, and that the section covers the obtaining of money or property of another by dishonest means. The words of the statute relied on follow: "Whoever, having devised . . . any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . shall, for the purpose of executing such scheme . . . place, or cause to be placed, any letter . . . in any post-office, . . . to be sent or delivered . . . " shall be punished. Questions somewhat similar have been considered in the lower courts but the issue here presented has never been decided by this court.

In *Weeber* v. *United States*, 62 Fed. 740, the defendant was convicted under the provision here in question, then a part of § 5480, Revised Statutes. The scheme to defraud alleged was this: One Kearney pretending to have a claim against Stephens placed it in defendant's hands for collection. An action was then pending in the federal court brought by the United States

against Stephens. Defendant caused to be mailed a letter purporting to be from the United States attorney to himself in reference to furnishing testimony tending to show Stephens liable to the government, and then caused the letter to be seen by Stephens intending that he would be frightened into paying the false claim in order to prevent disclosures to the United States attorney. The court held the indictment good and affirmed the conviction. But in that case there were involved trickery and deceit as well as threat. The contention that threats to injure do not constitute a scheme to defraud does not appear to have been made; at any rate, it was not discussed in the opinion.

In *Horman* v. *United States*, 116 Fed. 350, the Circuit Court of Appeals of the Sixth Circuit affirmed a conviction under § 5480. The defendant and others, pretending to have knowledge of crimes committed by Douglass and others, threatened to make them public unless given $7,000. The purpose of the conspiracy was to obtain money by means akin to, if not technically, blackmail and extortion. The court construed the section and said the words "to defraud" were not descriptive of the character of the artifice or scheme but rather of the wrongful purpose involved in devising it. And it held that (p. 352): "If the scheme or artifice in its necessary consequence is one which is calculated to injure another, to deprive him of his property wrongfully, then it is to defraud within the meaning of the statute."

On the basis of these cases the government argues that the statute embraces all dishonest methods of deprivation the gist of which is the use of the mails.

But in *Hammerschmidt* v. *United States*, 265 U. S. 182, we held that § 37 of the Criminal Code denouncing conspiracy "to defraud the United States in any manner or for any purpose" did not condemn a conspiracy to defeat the selective draft by inducing persons to refuse to register. It is there said that the decision in *Horman* v. *United States* went to the verge; that since that decision § 5480 had been amended to make its scope clearer; and that its construction in that case could not be used as authority to include within the legal definition of a conspiracy to defraud the United States a mere open defiance of the governmental purpose to enforce a law. And in the discussion of the words "to defraud" it is said that they primarily mean to cheat; that they usually signify the deprivation of something of value by trick, deceit, chicane or overreaching,

and that they do not extend to theft by violence, or to robbery or burglary. The reference in the opinion to "means that are dishonest" and "dishonest methods or schemes" does not support the government's construction of the phrase. The contrasts there emphasized and the context indicate the contrary.

And in *Naponiello* v. *United States*, 291 Fed. 1008, the Circuit Court of Appeals of the Seventh Circuit—a few days after the decision of the *Hammerschmidt* case but without reference to it—held that the use of the mails to send a letter to extort money by threats is not to promote a scheme to defraud within § 215; and said the words there used show unmistakably that the victim's money must be taken from him by deceit.

Undoubtedly the obtaining of money by threats to injure or kill is more reprehensible than cheat, trick or false pretenses; but that is not enough to require the court to hold that a scheme based on such threats is one to defraud within § 215. While, for the ascertainment of the true meaning and intention of the words relied on regard is to be had to the evils that called forth the enactment and to the rule that a strict construction of penal statutes does not require the words to be so narrowed as to exclude cases that fairly may be said to be covered by them, it is not permissible for the court to search for an intention that the words themselves do not suggest. *United States* v. *Wiltberger*, 5 Wheat. 76, 95.

If threats to kill or injure unless money is forthcoming do not constitute a scheme to defraud within the statute, there is none in this case. The only means employed by petitioner and his co-conspirators to obtain the money demanded was the coercion of fear. A comprehensive definition of "scheme or artifice to defraud" need not be undertaken. The phrase is a broad one and extends to a great variety of transactions. But broad as are the words "to defraud," they do not include threat and coercion through fear or force. The rule laid down in the *Horman* case includes every scheme that in its necessary consequences is calculated to injure another or to deprive him of his property wrongfully. That statement goes beyond the meaning that justly may be attributed to the language used. The purpose of the conspirators was to compel action in accordance with their demand. The attempt was by intimidation and not by anything in the nature of deceit or fraud as known to the law or as generally understood. The words

of the Act suggest no intention to include the obtaining of money by threats. There are no constructive offenses; and, before one can be punished, it must be shown that his case is plainly within the statute. *United States* v. *Lacher,* 134 U. S. 624, 628. In *United States* v. *Chase,* 135 U. S. 255, the indictment was under § 1 of the Act of July 12, 1876, c. 186, 19 Stat. 90, declaring "every . . . book, pamphlet, picture, paper, writing, print or other publication of an indecent character" to be unmailable, and making their deposit in the mails an offense. The question was whether to send an obscene letter by mail violated that section. The court held that the letter was not a writing within the meaning of the statute. It said (p. 261): "We recognize the value of the rule of construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of language in them which is ambiguous and equally susceptible of conflicting constructions. But this court has repeatedly held that this rule does not apply to instances which are not embraced in the language employed in the statute, or implied from a fair interpretation of its context, even though they may involve the same mischief which the statute was designed to suppress."

The threats in question cannot fairly be held to constitute a scheme to defraud.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court. U. S.